

June 18, 2009

## UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker  
Clerk of Court

## TENTH CIRCUIT

JAMES KEVIN STATEN,

Petitioner - Appellant,

v.

DAVID PARKER, Warden,

Respondent - Appellee.

No. 09-6050

(D. Ct. No. 5:08-CV-00655-F)

(W.D. Okla.)

## ORDER DENYING CERTIFICATE OF APPEALABILITY

Before **TACHA, TYMKOVICH**, and **GORSUCH**, Circuit Judges.

Petitioner David Staten, an Oklahoma state prisoner, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The district court denied his habeas petition and subsequently denied his application for a certificate of appealability (“COA”). Mr. Staten now seeks a COA from this court. We DENY Mr. Staten’s application for a COA and DISMISS his appeal.

**I. BACKGROUND**

Petitioner Staten was convicted of assault and battery with a dangerous weapon, in violation of Okla. Stat. tit. 21, § 645. The Oklahoma Court of Criminal Appeals (“OCCA”) affirmed his conviction. He then applied for state post-conviction relief, alleging, inter alia, that his trial counsel and appellate counsel had been ineffective. The

state district court denied that claim, and the OCCA affirmed. The OCCA concluded that Mr. Staten's claim of ineffective assistance of trial counsel had been waived because it had not been raised on direct appeal, with new counsel. The OCCA also affirmed, on the merits, the state district court's rejection of Mr. Staten's claim of ineffective appellate counsel. Mr. Staten then filed a habeas petition in federal district court, raising again his claims of ineffective assistance of trial and appellate counsel. He also brought a series of due process claims. The magistrate judge, in a detailed Report and Recommendation, recommended that the court deny Mr. Staten's petition on the merits.<sup>1</sup> The district court adopted the magistrate judge's recommendation and also denied Mr. Staten's application for a COA. Mr. Staten now seeks a COA from this court.

## II. DISCUSSION

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), we will issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard requires Mr. Staten to show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted). When the district court has denied a habeas

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<sup>1</sup>The district court did not evaluate the OCCA's holding that Mr. Staten's ineffective assistance of trial counsel claim was procedurally barred. The court exercised its discretion to go directly to the merits "[i]n the interest of judicial economy." See *Miller v. Mullin*, 354 F.3d 1288, 1297 (10th Cir. 2004).

petition on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* Because the district court assessed the merits of Mr. Staten’s petition, we apply that standard to his application.

We conclude that reasonable jurists could not find the district court’s ruling to be “debatable or wrong.” In Mr. Staten’s application for a COA, he asserts similar arguments to those that he raised in the district court in his habeas petition. The magistrate judge’s twenty-one page Report and Recommendation, which the district court adopted, thoroughly analyzed all of Mr. Staten’s claims, applying the appropriate habeas corpus standards to each of them. After a thorough review of the record and the filings in this case, we agree with the district court that no purpose would be served by repeating the determinations of the magistrate judge, or by presenting any additional analysis.

### **III. CONCLUSION**

Mr. Staten has failed to meet the AEDPA’s standard for the granting of a COA. We therefore DENY his request for a COA and DISMISS this appeal for substantially the reasons given by the magistrate judge and adopted by the district court. We GRANT the petitioner’s request to proceed *in forma pauperis*.

ENTERED FOR THE COURT,

Deanell Reece Tacha  
Circuit Judge